City of Lafayette Staff Report

For: City Council

By: David Golick, Planning Consultant

Date Written: April 7, 2008

Meeting Date: April 14, 2008

Subject: Request by Lafayette Hidden Oaks, L.P. for approval of a Pedestrian Trail Wall Agreement to allow a dry stack stone wall in the pedestrian trail easement on lot 2 (26 Sanford Lane (APN 185-430-004) be maintained by the owner of lot 3 (24 Sanford Lane (APN 185-430-005)

BACKGROUND

The Hidden Oaks subdivision is a 21 unit single family residential project that is under construction. The project is accessed from Hidden Oaks Drive, at its intersection with Condit Road.

The project contains a circular pedestrian trail easement located on both paved streets and off-road areas. The trail easement begins at the intersection of Condit Road and Hidden Oaks Drive, follows Hidden Oaks Drive to Samantha Drive, uses Samantha Drive to access the off-road part of the trail on lot 7, meanders through lot 7, through a grove to the rear of lot 6 near Las Trampas Creek. From lot 6, the trail easement is located in the rear portions of lots 5, 4, and 3. At lot 3, the easement uses lots 1 and 2 to reach Sanford Lane. (See Attachment #1– Subdivision 8438.) The trail easement has been recorded with Contra Costa County. The trail has been constructed within the approved easement and is being used by the public.

On October 9, 2007, the City Council approved a modification to the trail easement on lots 2 and 3 to allow a more usable rear yard area on lot 3. This modification to the trail easement has been recorded, and the trail path in the field has been realigned.

Although unrelated to the above City Council action on October 9, 2007, the issue on the agenda this evening involves an abutting section of the trail easement.

DRY STACK WALL ISSUE

A dry stack stone wall was supposed to have been constructed along the southeast side property line of lot 3. However, the wall actually was constructed within the ten ft. wide

pedestrian trail easement located within the southwest side property line of lot 2. This construction error caused the two problems discussed below.

According to the recorded pedestrian trail easement, the City of Lafayette is responsible for the maintenance of most improvements within the easement. (See Attachment #2 – Grant of Easement - Pedestrian Trail Easement.) The City does not want the responsibility for maintenance of the dry stack wall erroneously constructed within the trail easement. Furthermore, the easement states, "Grantor shall not erect or install any structure in the Easement Area or make any other use of the Easement Area that is inconsistent with the easement conveyed hereby".

A second issue caused by the construction of the wall involves lots 2 and 3. Rather than being constructed on lot 3, the wall was constructed on lot 2. However, the wall benefits lot 3 rather than lot 2.

APPLICATION - PEDESTRIAN TRAIL WALL AGREEMENT

This Agreement is requested by Lafayette Hidden Oaks LP. The terms of the Agreement (See Attachment #3) are summarized below:

- The City will have no maintenance responsibilities for the dry stack wall even though the wall is constructed within the pedestrian trail easement.
- The wall will be maintained by the owner of lot 3.
- The City may require the owner of lot 3 to maintain, repair, or remove the wall.
- In the event the wall is removed, a replacement wall would have to be constructed on lot 3 outside of the trail easement.
- The owner of lot 2 allows access to the City and the owner of lot 3 for maintenance, repair, or removal of the wall.

DISCUSSION

The issues involved in this agreement have been discussed with the Director of the Parks and Recreation Department and members of the Parks, Trails, and Recreation Commission. They have no concerns regarding Council approval of the Agreement.

A draft Agreement was prepared by Miller, Starr and Regalia, attorneys representing Lafayette Hidden Oaks, LP. This draft agreement was reviewed and revised by Planning Services staff, and later reviewed and approved as to form by the City Attorney.

The subject trail easement is ten feet wide. The dry stack wall is about three feet high and approximately 37 feet long. The encroachment is minor – from a few inches to about

one foot. No part of the encroachment impedes use of the trail by the public. The width of the trail path is not compromised by the encroachment.

STAFF RECOMMENDATION

Staff recommends that the City Council approves the Pedestrian Trail Wall Agreement and authorizes its recordation. If the Council decides not to approve an agreement, the developer will have to 1.) remove the dry stack stone wall from the City's pedestrian trail easement and 2.) reconstruct the wall on lot 3.

ATTACHMENTS

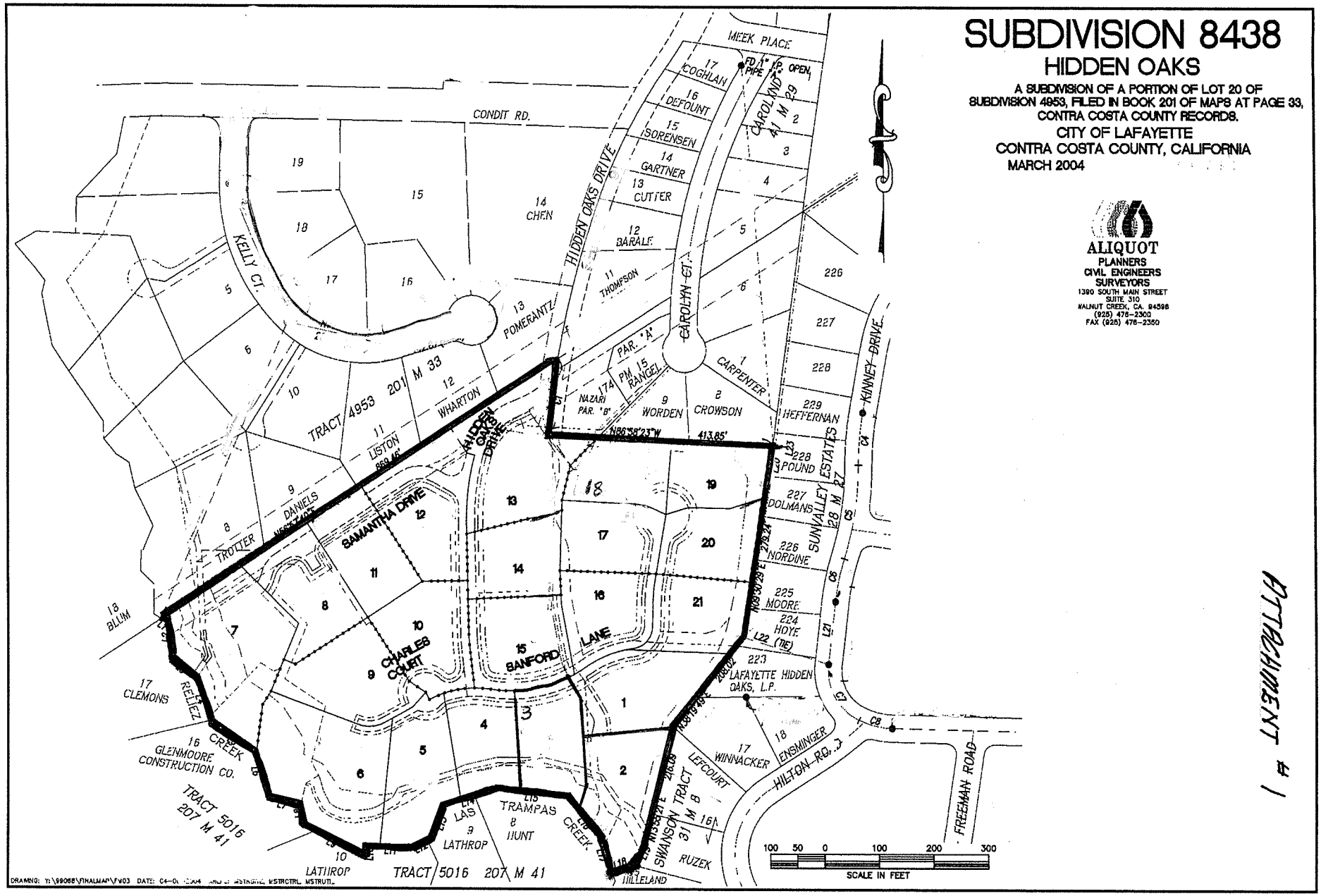
1. Map of Hidden Oaks subdivision
2. Grant of Easement –Pedestrian Trail Easement
3. Proposed Pedestrian Trail Wall Agreement

SUBDIVISION 8438

HIDDEN OAKS

A SUBDIVISION OF A PORTION OF LOT 20 OF SUBDIVISION 4953, FILED IN BOOK 201 OF MAPS AT PAGE 33, CONTRA COSTA COUNTY RECORDS.

CITY OF LAFAYETTE
CONTRA COSTA COUNTY, CALIFORNIA
MARCH 2004



ALIQUOT
PLANNERS
CIVIL ENGINEERS
SURVEYORS
1390 SOUTH MAIN STREET
SUITE 310
WALNUT CREEK, CA. 94596
(925) 476-2300
FAX (925) 476-2350

ATTACHMENT #1

ATTACHMENT #2

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Bingham McCutchen LLP
P.O. Box V
Walnut Creek, CA 94596-1270

Attention: Sanford M. Skaggs

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2004-0148709-00
Monday, APR 26, 2004 08:00:00
FRE $0.00
Ttl Pd $0.00 Nbr-0002096115
kat/R6/1-4

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF EASEMENT

For valuable consideration, receipt of which is acknowledged, Lafayette Hidden Oaks, LP, a California limited partnership (***"Grantor"***) grants to the City of Lafayette, a municipal corporation, (***"City"***) the easements described below affecting portions of the real property that is situated in said City, the County of Contra Costa, State of California and that is shown on the Map of Subdivision 8438 filed for record on APR 26 2004, in Book 463 of Maps at pages 40 *et seq.* of the Contra Costa County Records.

PEDESTRIAN TRAIL EASEMENT

Grantor grants to City an easement for a public trail over the portions of said real property delineated on said Map as "T.E." or "Trail Easement" (the Easement Area"), excluding any portions that are within the Private Drives Area defined below, for use by pedestrians only during daylight hours only. City may install or cause to be installed within the Easement Area a five foot wide paved trail, and necessary signage. City also may install or cause to be installed fencing along the edges of the Easement Area, but only where the width of the easement exceeds fifteen feet. By acceptance of this Deed, City agrees to maintain the Easement Area, any trail improvements therein (excluding said fences, which shall be maintained by the Grantor) and the trees and vegetation therein. Grantor shall not erect or install any structure in the Easement Area or make any other use of the Easement Area that is inconsistent with the easement conveyed hereby.

~~PEDESTRIAN EASEMENT OVER PRIVATE ROADS~~

~~Grantor grants to City an easement for use by the public of the private roads to be constructed on portions of said real property delineated on said Map as "Samantha Drive," "Charles Court," "Sanford Lane," and "Hidden Oaks Drive" (the "Private Drives Area"). The use of the Private Drives Area by the public shall be limited to use by pedestrians only during daylight hours only. Grantor shall maintain and repair, as necessary, the paving within the Private Drives Area.~~

ATTACHMENT #3

PEDESTRIAN TRAIL WALL AGREEMENT

[See Attached]

RECORDED AT THE REQUEST OF
AND WHEN RECORDED PLEASE
RETURN TO:

Miller Starr Regalia
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596
Attn: Eugene H. Miller

Space Above This Line Reserved For Recorder's Use

PEDESTRIAN TRAIL WALL AGREEMENT

This Pedestrian Trail Wall Agreement ("Agreement") is entered into on _____, 2008 by and between Lafayette Hidden Oaks, LP, a California limited partnership ("Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

A. Owner owns those certain real properties situated in the City, the County of Contra Costa, State of California and depicted as Lot 2 ("Lot 2") and lot 3 ("Lot 3") on the Map of Subdivision 8438 files for record on April 26, 2004, in Book 463 of Maps at pages 40 *et seq.* of the Contra Costa County Records and more particularly described on Exhibit A attached hereto (collectively, the "Property").

B. City is the grantee of that certain Pedestrian Trail Easement described in that certain Grant of Easement recorded in the Official Records of Contra Costa County on April 26, 2004 as Document # 2004-0148709-00 ("Easement").

C. Pursuant to the terms of the Easement, City agreed to maintain certain trail improvements located within the Easement area. A dry stack wall has since been erected by the Owner without City approval within the Easement area adjacent to the sideyards of Lot 2 and Lot 3, as further shown on Exhibit B (the "Wall"). The Wall benefits Lot 3 and should have been constructed on Lot 3. Notwithstanding the terms of the Easement, Owner and City desire to allocate to Owner of Lot 3 the obligation to maintain the Wall.

NOW, THEREFORE, the parties agree as follows:

1. Maintenance. Owner of Lot 3 hereby agrees to maintain the Wall situated adjacent to the sideyards of Lot 2 and Lot 3 and located within the Easement area, and the City shall have no maintenance responsibilities for the Wall.

2. Removal and Replacement of Wall. City may in its sole discretion require that Owner of Lot 3 maintain, repair, and/or remove the Wall upon thirty (30) days written notice. Owner of Lot 2, which in the future may no longer be Owner of Lot 3, hereby grants Owner of Lot 3 and the City access to Lot 2 for maintenance, repair, and removal of the Wall. Owner of Lot 3 hereby grants the City access to Lot 3 for maintenance, repair, and removal of the Wall. In the event the Wall is removed at any time and Owner of Lot 3 wishes to construct a replacement wall, it shall be constructed outside of the Easement area. If the Wall is not maintained, repaired, and/or removed by the Owner of Lot 3 upon thirty (30) days written notice, the City may place a lien on Lot 3.

3. Indemnity. Owner shall indemnify, protect, defend and hold City, its agents, employees, successors and assigns, free and harmless from and against any and all claims, actions, causes of action, suits, obligations, liens, proceedings, costs, expenses, judgments, orders, decrees, damages, or liabilities arising out of or in any way connected with the Wall.

4. Miscellaneous. This Agreement shall bind and inure to the benefit of the respective successors of Owner and City. This Agreement may be executed in counterparts and assembled to form a single, integrated instrument. This Agreement shall be recorded against the Property, both Lot 2 and Lot 3. This Agreement shall be recorded within ten days after execution by the parties. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the Owner and City have executed this Agreement the day and year first written above.

OWNER:

LAFAYETTE HIDDEN OAKS, L.P.,
a California limited partnership

By: Lafayette Hidden Oaks, LLC,
A California limited liability company
Its General Partner
By: Branagh Development, Inc.
A California corporation
Its Managing Member

By: _____
Peter W. Branagh,
Its President

CITY:

CITY OF LAFAYETTE, a municipal corporation

By: _____
Name: Mike Anderson
Its: Mayor

EXHIBIT A

PROPERTY DESCRIPTION

[See Attached]

PROPERTY DESCRIPTION

LOT 2

Lot 2 of Subdivision Map 8438, filed April 26, 2004, in Book 463 of Maps, Pages 40 through 50, inclusive, Official Records of Contra Costa County.

LOT 3

Lot 3 of Subdivision Map 8438, filed April 26, 2004, in Book 463 of Maps, Pages 40 through 50, inclusive, Official Records of Contra Costa County.

EXHIBIT B

DEPICTION OF LOCATION OF WALL

[See Attached]

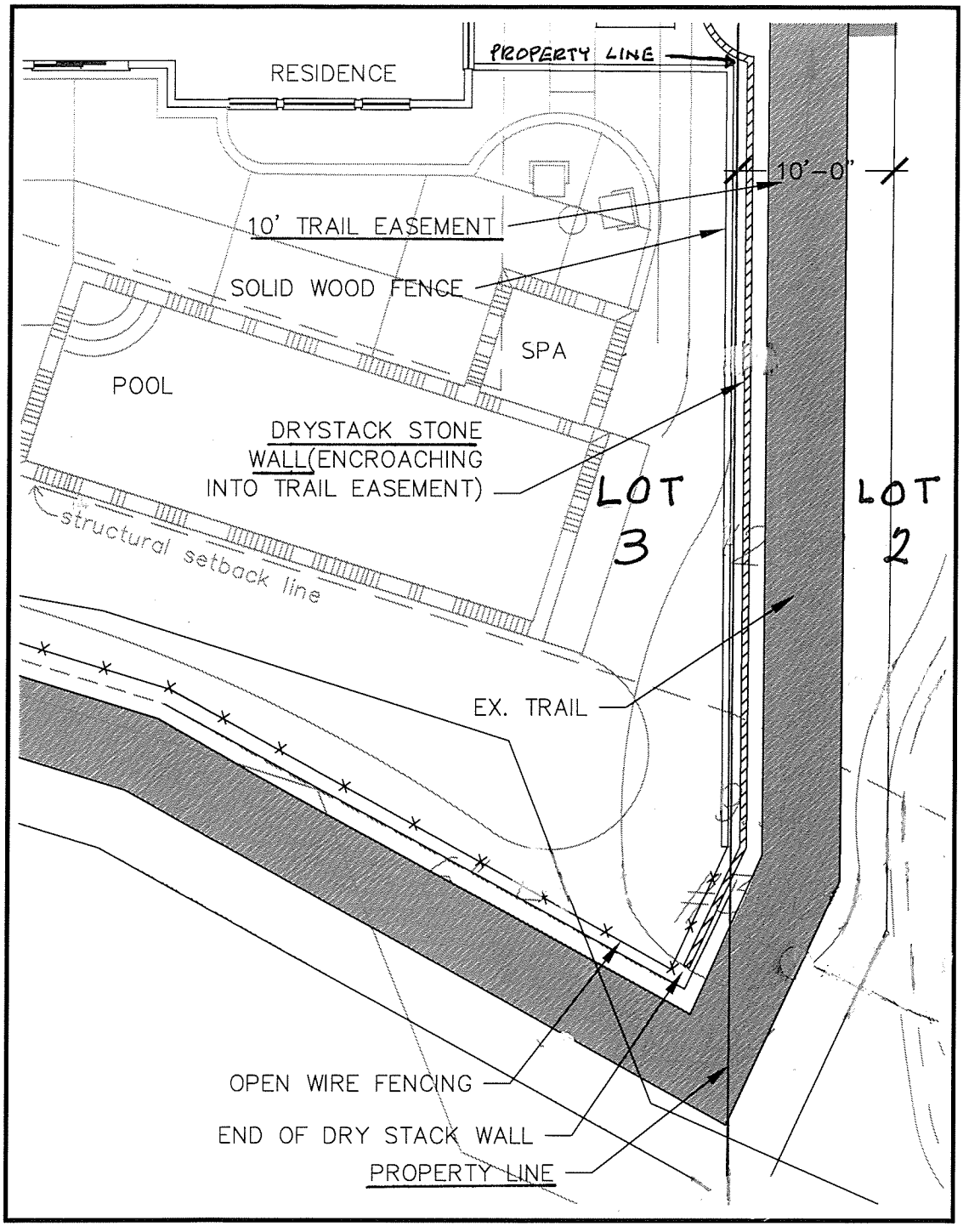


EXHIBIT 'B' - WALL LOCATION

NOT TO SCALE

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2008 before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2008 before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

_____
Notary Public